

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1843

Cir. Ct. No. 2012TP8

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO CHLOE D., A PERSON UNDER
THE AGE OF 18:**

JESSICA G. AND JOSHUA G.,

PETITIONERS-RESPONDENTS,

V.

ALICIA L.,

RESPONDENT-APPELLANT,

ANDREW E.,

RESPONDENT.

APPEAL from an order of the circuit court for Calumet County:
JEFFREY S. FROEHLICH, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Alicia L. appeals from an order terminating her parental rights to Chloe D. Alicia L. argues that her consent to the termination was not voluntary and that it was not in Chloe D.’s best interests to terminate Alicia L.’s parental rights. The record shows that the circuit court ascertained that Alicia L.’s consent was voluntary and appropriately exercised its discretion when it terminated Alicia L.’s parental rights. We affirm.

FACTS

¶2 Chloe D. was born on February 15, 2010, when Alicia L. was twenty-two years old. The prospective adoptive parents and petitioners for the termination of parental rights (TPR), Jessica and Joshua G., were acquainted with Alicia L. and helped care for Chloe D. Starting at around seven months of age, Chloe D. stayed on and off with Jessica and Joshua G. Jessica G. contacted the Community Adoption Center, Inc., (the Center) to look into adopting Chloe D. During the three months prior to the Center’s court report on the TPR, Alicia L. had at least four counseling sessions with the Center, along with multiple contacts on the telephone. Alicia L. indicated to the counselor at the Center that “she does not feel she is emotionally or financially equipped to parent Chloe.” At the time of the report, Chloe D. had already been living with the Jessica and Joshua G. for over six months.

¶3 In October 2012, Jessica and Joshua G. filed a petition for TPR. Jessica and Joshua G. listed themselves as the “child’s primary caregivers and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

intended adoptive parents” and indicated that Alicia L. would consent to the TPR. The father consented to the TPR.

¶4 The circuit court heard the petition on November 13, 2012, and terminated Alicia L.’s parental rights on December 21, 2012. On April 9, 2013, the circuit court amended the TPR order to change the guardianship, placement and care responsibility, and custody of Chloe D. to the Center, rather than Jessica and Joshua G. On May 14, 2013, Alicia L.’s parents, Bruce and Sandra L., moved to intervene, vacate the TPR order and stay the adoption proceedings, arguing, among other things, that the circuit court had not adequately looked into the relationship between Bruce and Sandra L. and Chloe D. The circuit court heard and denied Bruce and Sandra L.’s motion to intervene, but agreed to hear testimony from Bruce and Sandra L. regarding their relationship with Chloe D. for purposes of the best interests of the child analysis under WIS. STAT. § 48.426(3). After this hearing, the circuit court again terminated Alicia L.’s parental rights by order dated July 26, 2013. Alicia L. appeals.²

² One of Jessica and Joshua G.’s arguments is that Alicia L.’s appeal is limited to “whether the trial court abused its discretion in finding that severing the maternal grandparents’ relationship with Chloe D. would not be harmful to Chloe D.” because Alicia L. previously attempted to appeal the December 21, 2012 and April 9, 2013 orders. Regarding that appeal, we held that “the subsequent orders dated June 20 (Order 3) and July 26 (Order 4) render the termination provisions of Orders 1 and 2 moot.” We then ordered that Alicia L.’s appeal No. 2013AP1284 was dismissed and that the record be transferred to the current appeal, No. 2013AP1843. In its July 26, 2013 order, the circuit court restated its conclusion that Alicia L.’s consent was knowing and voluntary, even though the actual finding is in the initial orders.

DISCUSSION

Voluntary Consent

¶5 The circuit court’s determination that consent to TPR is voluntary and informed is a conclusion of law. *T.M.F. v. Children’s Serv. Soc’y*, 112 Wis. 2d 180, 188, 332 N.W.2d 293 (1983). However, the determination is “derived from and intertwined with” the circuit court’s factual findings based on its opportunity to question and observe witnesses. *Id.* Therefore, upon review of a circuit court’s determination that consent to terminate parental rights is voluntary and informed, “the appellate court should give weight to the trial court’s decision, although the trial court’s decision is not controlling.” *Id.* (citation omitted).

¶6 The circuit court may accept a parent’s voluntary consent to TPR only after questioning the parent and determining that the consent is voluntary and informed. WIS. STAT. § 48.41(2)(a). In making its determination, the circuit court must gather information about six factors. *T.M.F.*, 112 Wis. 2d at 196-97 (listing factors). Alicia L.’s argument concerns four of these factors: (1) her general comprehension, (2) her understanding of the proceedings, (3) whether any promises or threats were made to her in connection with the TPR, and (4) her awareness of alternatives to TPR.

Education and Comprehension

¶7 Alicia L. testified that she graduated from high school and had some additional training in day care. She believed she understood all the proceedings going on at the hearing. The circuit court asked Alicia L. if she thought “there is some medication you should be taking for your depression,” and Alicia L. answered, “No, because ... it doesn’t work.” The circuit court delved further into

this subject, asking Alicia L. if she thought the lack of this medication was causing her any difficulty in understanding what was going on in court. When Alicia L. answered, “It depends,” the circuit court asked if she was having any trouble understanding what was going on that day. Alicia L. answered, “No, not this, no.” While Alicia L. did testify that she has a cognitive disability that slows her reading, she indicated that she had enough time to process the TPR form she signed.

Understanding of Proceedings and Consequences

¶8 Alicia L. testified that she understood that by consenting she was relinquishing her right to have legal custody of Chloe D., including her right to make major decisions for her, such as where she attends school, her medical care and her religious upbringing. She said she understood that giving up her parental rights meant she would not be able to come back and ask the court for legal custody of Chloe D. Alicia L. acknowledged that after consenting to termination of her parental rights, she would no longer have any right to placement or visitation with Chloe D. Alicia L. admitted that she was “scared” that Jessica and Joshua G. would have no obligation to allow her to continue to see Chloe D., but indicated that she still wanted to terminate her parental rights. Alicia L. testified that the counselor from the Center had discussed the rights she would be relinquishing by agreeing to terminate her parental rights.

¶9 Alicia L. also testified that she understood that if she did not consent to termination of her parental rights, the State would have to file a petition requesting the circuit court to involuntarily terminate her rights, which would entitle her to a jury trial. Alicia L. indicated she understood that she had the right to appeal any final order of the court within thirty days, but that changing her mind

would not be a basis for appeal, rather there would have to be some error in the proceedings. Alicia L. indicated that she thought her chances of prevailing on an appeal of the circuit court's decision would be "[v]ery slim." When asked to describe the rights she was giving up, Alicia L. said, "The right for medical, education, where she lives, what she's doing, all that kind of stuff." She said that terminating her parental rights meant that she "can't make pretty much any decisions as she grows up."

Promises or Threats

¶10 Alicia L. initially testified, at the November 13, 2012 hearing, that no one had made any promises to her or threatened her to get her to consent to termination of her parental rights. The circuit court questioned Alicia L. about the TPR consent form she had signed, verifying that she had read it, understood it, and that no one had made any threats or promises to her to get her to sign it. The circuit court also heard testimony from both Jessica and Joshua G. that they had not threatened Alicia L. in any way to get her to agree to terminate her parental rights. No one gave her any gifts to prompt her testimony. Later, at the June 26, 2013 hearing, after her parents had become involved, Alicia L. indicated that she had felt pressured into consenting to the TPR. When asked if Jessica G. had threatened Alicia L. with having to pay Jessica and Joshua G.'s attorney's fees and costs related to the adoption, Alicia L. testified that she thought, "[I]f I drop out of everything ... that I would have to pay her back the full amount of everything." Alicia L. said this was "told to her" in June or July of 2012. Alicia L.'s counselor testified that Alicia L. came to her with this concern of a possible lawsuit if Alicia L. backed out. The counselor advised Alicia L. that Jessica and Joshua G. could not sue her for money related to the adoption.

Awareness of Alternatives

¶11 Alicia L. testified that she was aware that she could try to get Chloe D. placed temporarily in a foster home or with her parents or brother until she was prepared to take care of Chloe D. She indicated that she knew she could get public assistance to help her out financially, as well as other types of public assistance with housing and medical expenses. Alicia L. also said she was aware of the possibility of foster care, but that she would rather go through with the TPR.

¶12 Given the above testimony, we cannot say that the circuit court erred when it concluded that Alicia L.'s consent to terminate her parental rights to Chloe D. was voluntary and informed. On appeal, Alicia L. argues that she was coerced into consenting, but the testimony on this matter is vague. Alicia L. consented to the TPR and then, after her parents found out about it and became involved, said that she had felt pressured to proceed with the TPR. There is testimony that Alicia L. had more than one opportunity to discuss the perceived threat with her counselor, including a lengthy discussion during a recess at the November 13, 2012 hearing, after which Alicia L. proceeded with the TPR. Alicia L. testified throughout that hearing that she thought it was in Chloe D.'s best interests to terminate her parental rights and that she was freely and voluntarily giving up her parental rights. Alicia L.'s parental rights were terminated on December 21, 2012. The hearing subsequent to Bruce and Sandra L.'s motion to intervene was on June 26, 2013, and Alicia L. testified again. To the extent there is any conflict in the testimony, it was for the circuit court to determine credibility. *Lellman v. Mott*, 204 Wis. 2d 166, 172, 554 N.W.2d 525 (Ct. App. 1996).

Best Interests

¶13 Alicia L. argues that the circuit court erroneously exercised its discretion when it found that termination of Alicia L.’s parental rights was in Chloe D.’s best interests.

¶14 When deciding whether to terminate parental rights, the circuit court must make its findings on the record and explain the basis for its decision, considering the standard and factors set forth in WIS. STAT. § 48.426. *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶29-30, 255 Wis. 2d 170, 648 N.W.2d 402. Ultimately, the decision whether to terminate parental rights is a matter of circuit court discretion. *Id.*, ¶42.

¶15 The circuit court here set forth its extensive findings and well-reasoned conclusion regarding its decision to terminate Alicia L.’s parental rights. The circuit court discussed each of the six factors set forth in WIS. STAT. § 48.426(3), with a thorough discussion of Chloe D.’s relationship with Alicia L. and Alicia L.’s family. While we need not recount the circuit court’s entire decision, we note that, among other things, and in particular, the circuit court noted the following. Alicia L. had testified that Chloe D. was safe and healthy with Jessica and Joshua G., with whom Chloe D. had been living for over six months. Alicia L. had failed to show up at visitations with Chloe D., and Alicia L. showed “almost no emotion” when testimony was taken about Chloe D.’s relationship with Alicia L.’s family. Alicia L. left Chloe D. with other people “when she didn’t want to parent Chloe.” By the time of the July 2013 hearing, Chloe D. had been separated from Alicia L. for one year and three months. Finally, the court noted that the current placement with Jessica and Joshua G. is

stable, with “a mother and father figure in a committed relationship ... well employed and financially stable.”

¶16 Alicia L. grasps at specific pieces of testimony that she says the circuit court “ignored,” arguing that the circuit court “at best, weighed competing evidence in favor of the termination.” Alicia L. argues the circuit court relied on testimony that Bruce and Sandra L. did not keep their house clean and that Bruce and Sandra L. could not pronounce their other granddaughter’s last name. Alicia L. contends that it was error for the circuit court to conclude that Alicia L.’s decision not to tell her family about the TPR meant that the family’s relationship with Chloe D. was not significant.

¶17 The weighing of competing evidence is precisely what the circuit court must do to exercise its discretion. The function of the circuit court is to assess credibility, sift through facts, and weigh the evidence to reach a conclusion. *Dane Cnty. DHS v. Mable K.*, 2013 WI 28, ¶39, 346 Wis. 2d 396, 828 N.W.2d 198 (“A circuit court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law, and using a demonstrated rational process reaches a conclusion that a reasonable judge could reach.”). The circuit court’s decision on Chloe D.’s best interests was well within its sound discretion.

¶18 The circuit court did not err in its conclusion that Alicia L.’s consent to TPR was voluntary. Additionally, the circuit court did not erroneously exercise its discretion in finding that it was in Chloe D.’s best interests to terminate Alicia L.’s parental rights.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

